Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

PAUL BURDETT KNAPP

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Whether the trial court erred in denying the motion to dismiss the indictment for duplicity?

2) Whether the trial court erroneously failed to instruct the jury on unanimity?

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UNITED STATES OF AMERICA,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner Knapp respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on January 26, 1994.

OPINION BELOW

The Court of Appeals entered its Opinion on January, 1994, affirming the conviction of petitioner for false statement, in violation of Title 18, United States Code, Section 1001. The Ninth Circuit denied the Petition for Rehearing filed on February 7, 1994 by order dated April 11, 1994.

JURISDICTION

In October, 1991, the government obtained a 19 count indictment charging conspiracy, theft of government property, false statement and perjury in violation of 18 U.S.C. §§ 371, 641 and 1001. The only defendant was Mr. Knapp, an elderly, retired log scaler. Timber companies and the scaling bureau were named as unindicted co-conspirators. On July 15,1992, Mr. Knapp was found guilty of count 2 after weeks of trial by jury. Mr. Knapp was sentenced by Judge Legge on December 29, 1992. Mr. Knapp received a sentence of 24 months incarceration and a three year term of supervised release. The Ninth Circuit affirmed Mr. Knapp's conviction by Opinion issued January 26, 1994.

The court also denied the Petition for Rehearing filed February 7 , 1994 by Order dated April 11, 1994.

The jurisdiction of this court is invoked under Title 28, United States Code, § 1254 (1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. Section 1001 provides:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both."

STATEMENT OF THE CASE

The statutory basis for Ninth Circuit jurisdiction was 28 U.S.C. §1291.

This was a timber theft case. The government investigated irregularities in harvesting, scaling and payment of timber sales in Oregon between 1983- 1988. Targets of the investigation included many timber companies and affiliates, an independent log scaling bureau, log scalers and check-scalers. The

government's investigation focused on whether scale sales for previous timber sales had been accurate or not.

Simply described, "scale sales" is a procedure whereby the purchaser pays the government a designated rate for each board foot of the different species of timber removed from the sale site. The board feet being removed is hauled by log truck to be measured by a log scaler (an employee of an independent, third-party scaling bureau.) The log scaler measures the load, then enters the amount on a scale ticket. Based upon the kind of wood and the amount shown on the scale ticket, the purchaser is billed and the forest service is paid.

The value of timber varies according to its classification. Some is "nonmerchantable" and costs much less; the forest service typically sells such timber for a lump sum amount as part of the contract price for a sale. Any log determined by a log scaler to be "nonmerchantable" is not billed to the purchaser and is not paid for on a scale basis to the forest service.

Thus the government's investigation attempted to determine whether or not some log scalers had produced false and fraudulent scaling tickets therefore

cheating the forest service of revenues due. This was suspected to occur in three different ways: (1) logs would be measured as less board feet than they actually were; (2) "merchantable" timber would be listed as "non-merchantable"; or (3) logs would be listed as a less valuable species of timber.

In October, 1991, Mr. Knapp, the defendant/petitioner herein, was indicted. He was the only defendant, although timber companies and others were listed as unindicted co-conspirators. The 19 count indictment included one count of conspiracy, nine counts of violation of 18 U.S.C. § 1001 (falsity to a government agency) and eight counts of 18 U.S.C. § 641 (theft of government property). Mr. Knapp was also charged with a count of perjury.

The focus of the appeal and the reason for this writ, was the pleading of count 2. That count purported to charge a violation of 18 U.S.C. § 1001 (falsity to a government agency) and in so doing, incorporated within its allegations, by reference, the "manner and means" section and all of the overt acts of the preceding conspiracy count (count 1). Interestingly, the "manner and means" section was not limited to any time frame

whatsoever. One portion of count 2, (specifically overt acts 25-41), incorporated by reference the subsequent substantive counts of the indictment, counts 3-19. When the substantive counts were incorporated into count 2, it then included allegations the defendant committed a violation of 18 U.S.C. § 1001 by committing theft of government property eight separate times, by committing a violation of 18 U.S.C. § 1001 eight separate times and by committing perjury. Moreover, of the 28 overt acts referenced, only six were within the statute of limitations (overt acts 1, 3, 25, 26, 27 and 28).

Pretrial Defendant moved against count 2 as duplicitous, because it charged more than one offense within a single count. The motion was denied. Defendant raised the issue again at the close of the government's evidence and at the close of all the evidence. The motions were denied.

Trial in this case lasted approximately three weeks. The evidence was convoluted and confusing. At least 7000 log scale tickets were received into evidence along with statistical analyses, expert testimony and other evidence spanning a time period from 1983 to 1990. During the trial the government moved to dismiss

some counts and to strike some allegations. The redacted indictment consisted of only counts 1 and 2. The number of overt acts incorporated by reference into count 2 was significantly reduced. But even when thus redacted, count 2 purported to allege a violation of 18 U.S.C. § 1001 (falsity to a government agency) and, included allegations of four separate and distinct offenses that had previously been alleged as individual substantive violations of 18 U.S.C. § 1001 (counts 11, 12, 13 and 15) before the indictment was redacted.

Defendant's contention was and is that count 2 was duplicitous because it alleged more than one offense. Under 18 U.S.C. § 1001 it is possible to commit the offense by any of three acts (falsifies, conceals or covers up) being connected with any of the three means (trick, scheme or device.) One of the alternative options would be to "falsify a material fact by the use of a device." A log scaling ticket could be such a device. For example, a scaling ticket that identified a log as cull 56 when it was in fact a merchantable 29 would be use of such a device. Here, if the jury were to find that the facts alleged in the overt acts incorporated were proven as to any of those incorporated overt acts, then an offense was proven.

Thus, as to overt act 25 (incorporated from count 3) a completed crime would be set forth as occurring on or about December 22, 1987, with scale ticket no. 1905752. But for a completed crime as to overt act 26, proof would be necessary for February 2, 1988 (incorporated from count 4) with scale ticket no. 1906797, a different date and a different document. Likewise overt act 27 (incorporated from count 5). A different date: February 5, 1988 and a different document: scale ticket no. 1906814. And overt act 28 (incorporated from count 7): a different date: March 31, 1988 and a different document: scale no. 1902654. Each of the overt acts set out a different offense in the substantive counts. But they were also incorporated by reference and combined together in count 2 and that is the duplicity of which defendant complains.

The defendant was prejudiced by this duplicity. The trial court failed to instruct the jury that they all had to decide solely upon a single overt act constituting the offense and unanimously agree that such specific overt act had in fact been committed. The result is precisely the horror noted in Bins v. United States, 331 F.2d 390, 393 (5th Cir. 1964): we cannot determine what the jury found.

Some jurors may have believed Mr. Knapp guilty as to overt act 25 while not guilty as to overt act 27 and vice-versa. The duplicitous nature of the count and the lack specific jury instruction denied Mr. Knapp his right to due process and a unanimous jury verdict.

REASONS FOR GRANTING THE WRIT

The court should grant the Writ for the following reasons:

1) The Ninth Circuit Opinion in this case unlawfully expands 18 U.S.C. § 1001.

The Opinion herein would allow pleading and proving a "scheme" under 18 U.S.C. § 1001 where Congress has not so provided. Under a "scheme" theory the defendant may be charged with any number of separate and distinct offenses all in one count. Defense of such jumbled allegations is made more difficult, due process is denied and the jury is not required to make a unanimous determination regarding each distinct allegation.

2) The Ninth Circuit Opinion in this case is in conflict with established law from its own circuit.

The Opinion herein, while citing United States v. UCO Oil Company, 546 F.2d 833 (9th Cir. 1976) actually

reaches a determination contrary to that holding and contrary to other, well-established Ninth Circuit authority regarding dupilicity in indictments. See e.g. United States v. Mastelotto, 717 F.2d 1238 (9th 1983); United States v. Escheverry, 719 F.2d 974 (9th Cir. 1983); United States v. Gilley, 836 F.2d 1206 (9th Cir. 1988); United States v. Smith, 891 F.2d 703 (9th Cir. 1989). The Opinion appears to abrogate the necessity for the government to plead and prove separate offenses in separate counts. It also appears to abrogate the requirement of unanimous jury verdicts.

3) The decision herein is in conflict with law of other circuits.

The decision is a departure from the law regarding duplicity both in the Ninth Circuit and other circuits. See e.g. Bins v. United States, 331 F.2d 390 (5th Cir. 1964). Because of the nature of the charges in count 2 in this case and the trial court's lack of specific unanimity instruction regarding that count a reviewing court and tell what the jury decided; thus defendant was prejudiced.

4) The decision herein is in conflict with or misconstrues the Supreme court's holding in Schad v.

Arizona, 501 U.S. 624, 111 S.Ct. 2491, 115 L.Ed 2d 555 (1991)

Clarification and guidance are needed to assist courts and litigants of the extent to which allegations may be combined without running the risk of duplicity. And, if the rule is to be liberal, i.e. that the government may charge any and all such offenses in one count under 18 U.S.C. § 1001 as a "scheme" then guidance is needed regarding the standard of agreement we will require from the jury. In conspiracy cases in the Ninth Circuit at least, the jury is generally required to agree on a particular overt act to insure there is unanimity in the verdict. Such a minimal requirement seems appropriate in this instance as well.

POINTS OF LAW

"Duplicity is the joining in a single count of two or more distinct and separate offenses. One vice of duplicity is that a jury may find a defendant guilty on a count without having reached a unanimous verdict on the commission of a particular offense." United States v. UCO Oil Company, 546 F.2d 833 (1976).

Duplicity may occur in either of two ways: by combining in one count two separately defined offenses,

e.g. mail fraud (18 U.S.C. § 1341) and theft of government property (18 U.S.C. § 641); or it may occur by combining in one count the commission of two factually separate offenses, e.g. the murder of Jones on January 1 and the murder of Smith on February 27. United States v. UCO Oil Company, supra, 546 F.2d 833; United States v. Licciardi, 92-10046, slip. op. (Ninth Ciruit January 11, 1994), demonstrate combining two separate offenses into one count. Bins v. United States, 331 F.2d 390, 393 (5th Cir. 1964) demonstrates an example of where two factually separate offenses are combined in a single count.

The decision of the Ninth Circuit in this case is directly contrary to its holding in United States v. UCO Oil Company, 546 F.2d 833 (1976). The present decision recognizes that UCO Oil Company is good law and relied upon it concerning the holding that 18 U.S.C. § 1001 defines only one offense. But the court in UCO Oil Company specifically ruled that making a separate count out of each document pursuant to the allegations that the defendant knowingly and willfully made and used false writing and documents knowing the same to contain false, fictitious and fraudulent statements and entries and

falsified, concealed and covered up by trick, scheme and device material facts did not violate the rule against multiplicity. United States v. UCO Oil Company, supra, 546 F.2d at 835, 838-839. And the court so held despite the fact that many of the documents that constituted the basis of each separate count were included together in one submission to the government.

The documents in this case (scale tickets), described in counts 3, 4,5 and 7 and "overt act" numbers 25, 26, 27 and 28 were each equally individual, but were allegedly submitted days or months apart from each other. Originally the government had charged those "overt acts" as separate substantive offenses. Then it had them dismissed. At that point the overt acts incorporated into count 2 should have been stricken as duplicitous as well.

The government is not entitled to have it both ways, particularly under the same pleadings. The only way in which the multiple counts in the UCO Oil Company case were not multiplicitous is because the court held that each set out a separate offense. But here, the separate offenses were dismissed; only duplicitous

count 2 was left. And, the government could not justify such a count based upon a "scheme" theory.

Any reasonable analysis of 18 U.S.C. § 1001 demonstrates the operative words of that statute are "falsifies, conceals or covers up." The object of those verbs is "a material fact." "Fact" is singular in the statute, not plural. The gravamen of the offense is to falsify, to conceal to cover up, "a fact." The essence of the offense is not to enter into a scheme, if it were, it would have been so provided just as it is regarding conspiracy or wire fraud. In other words, if Congress had wanted to create some crime that was in essence a unilateral conspiracy to conceal facts from the government it could have done so. See e.g. 18 U.S.C. § 371. It did not choose to do so.

However, apparently, the Ninth Circuit erroneously accepted the government's "scheme" theory (see: Opinion, page 4). The Opinion ignored the plain language of 18 U.S.C. § 1001 and cited no authority to support its position to the contrary.

The duplicitous nature of count 2 was not cured during instructions to the jury at trial. The instructions given were even broader than the "scheme theory" of the

government, i.e. that the jury simply should consider count 2 in its entirety but without any restriction to only the scheme portion of the statute and of the charge itself. This instruction must be contrasted against the court's instruction regarding count 1, conspiracy. The trial court advised the jury on the conspiracy charge of the necessity of a unanimous finding regarding specific elements of the conspiracy charge with relation to the overt acts, nature of the agreement and with relation to the alleged co-conspirators. Of further note is the fact the trial court made a graphic differentiation between instructions on unanimity regarding the two counts:

> ". . . whether your verdict is guilty or whether your verdict is not guilty must be unanimous. And it must be unanimous on each count and **must be unanimous on the specific elements of count 1, the conspiracy count**, that I've already mentioned to you. So we have to have unanimity whether that unanimity is for guilty or not guilty. Tough job, but it's doable."
>
> (RT 3855, ER 200). (Emphasis added).

The Ninth Circuit also misconstrued the plurality holding in Schad v. Arizona, 501 U.S. 624, 111 S.Ct 2491, 115 L.Ed 2d 555 (1991). There, the court dealt with a situation where the defendant was charged with

murder by alternative means, i.e. premeditation or in the commission of a felony. Schad v. Arizona, supra, 111 S.Ct at 2496. So, when the Supreme Court in Schad, speaks of "an indictment need not specify which overt act, among several named, was the means by which a crime was committed" it is clear from the discussion following, and the examples utilized, that the court is making reference to alternative means of committing one factual offense.

Such must be contrasted with alleging multiple factual offenses that could, arguably, be called the means to committing a single legal offense, e.g. charging a defendant with murder, but alleging the killing of three different individuals, on three different dates, at three different locations and involving three different sets of circumstances. Thus, the prosecution would argue, if the jury found that the defendant murdered Jones he would be guilty of murder, or if they found he had murdered Smith he would be guilty of murder, or if he was found to have murdered Brown he would be guilty of murder. Then, the prosecution, analogizing to the present situation, would argue that all the jurors would not have to agree, i.e. be unanimous, concerning any one of the

three different murders so long as they all agreed he had committed a murder.

The analogy comports precisely with the situation before the court. Particularly this is so if all three murders were connected by a single aspect, e.g. contract murder.

Contract murder is a defined form of death penalty offense in many states. Cf: ORS 163.095 (1) (a). Nevertheless, if the prosecution were to allege that pursuant to a single contract, the defendant murdered Smith, Jones and Brown on different dates at different locations and combined the same all in one count, such a count would be duplicitous. A jury would have to agree, unanimously, regarding the defendant's killing of at least one such individual in order to find the defendant guilty.

In our case the government theorized the defendant had an enduring scheme to defraud the government. The government contended that such single scheme was sufficient to supply the required element every time the defendant utilized such scheme to "falsify, conceal and cover up [a] material fact" But each such falsification, concealment or covering up of a material fact would constitute a separate offense, regardless of the fact that they are part of a single scheme. Moreover

the government did not limit itself to just a scheme, but also had the benefit of pleading, and receiving instructions to the jury that falsification, concealment, and covering up, by means of device or trick would also suffice to create guilt.

The plurality opinion in Schad v. Arizona, supra, 111 S.Ct 2491, emphasizes that "the level of definitional and verdict specificity permitted by the Constitution, . . . is a distillate of the concept of due process with its demands for fundamental fairness. . .and for the rationality that is an essential component of that fairness. Id at 2500. Not requiring a jury to select between premeditated murder and felony murder was then held not to violate such standard. The same would not appear to apply to allowing a jury to bifurcate or even fragment among at least four separate and independent complete offenses.

The rule in this regard, as to pleading and unanimity of verdicts has been succinctly set out in the Ninth Circuit previously. United States v. Mastelotto, 717 F.2d 1238 (9th 1983); United States v. Escheverry, 719 F.2d 974 (9th Cir. 1983); United States v. Gilley, 836 F.2d 1206 (9th Cir. 1988); United States v. Smith, 891 F.2d

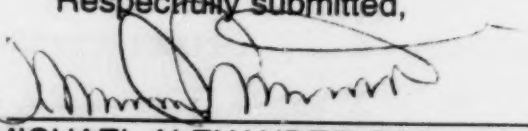
703 (9th Cir. 1989). There is nothing in Schad v. Arizona, supra, 111 S.Ct 2495, that has changed that rule. The Ninth Circuit, in this case, has not justified such a departure from the rule.

CONCLUSION

For all the foregoing reasons, petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

DATED this 13th day of July, 1994.

Respectfully submitted,



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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	No. 93-30016
vs.	)	DC No.CR-91-60176
PAUL BURDETT KNAPP, Defendant-Appellant.	)	MEMORANDUM[1]

Appeal for the United States District Court for the District of Oregon
Charles E. Legge, District Judge Presiding

Argued and Submitted January 7, 1994
PORTLAND, OREGON

Before: POOLE, TROTT and KING[2], Circuit Judges

Paul Burdett Knapp was convicted for making false statements to the U.S. Government in violation of 18 U.S.C. § 1001. Knapp appeals his conviction, arguing the district court erred in denying

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[1]This disposition is not appropriate for publications and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[2]Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

dismissal of the indictment, failing to instruct the jury that it had to reach a unanimous verdict on the underlying acts supporting County 2 of the indictment, and submitting to the jury a redacted copy of the indictment.

I.

Duplicity of Count 2

We review "the question whether counts of an indictment are duplicitous de novo." United States v. Bryan, 868 F.2d 1032, 1037 (9th Cir.), cert. denied, 493 U.S. 858 (1989). The court looks "to the indictment itself to determine whether it may fairly be read to charge but one crime in each count." Id.

Knapp argues Count 2 of the indictment is duplicitous because six of the alleged overt acts could each constitute a separate

offense under 18 U.S.C. § 1001.[3] Count 2 stated:

> Beginning at date unknown and continuing until on or about April 23, 1991, . . . defendant PAUL BURDETT KNAPP did knowingly and willfully falsify conceal, and cover up material facts by trick, scheme, and device; to wit:
>
> The government realleges and incorporates by reference the Manner and Means and Overt Act sections of Count One of this superseding indictment.
>
> In violation of Title 18, United States Code, Section 1001.

The "Manner and Means" and "Overt Acts" sections then set out the specifics of Knapp's activities, describing them in the context of the conspiracy charge.

"Duplicity is the joining in a single count of tow or more distinct and separate offenses. One vice of duplicity is that a jury may find a defendant guilty on a count

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[3]Section 1001 states.

> Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a mater fact, . . . shall be fined not more that $10,000 or imprisoned not more than five years or both.

18 U.S.C. § 1001 (1986).

without having reached a unanimous verdict on the commission of a particular offense." United States v. UCO Oil Co., 546 F.2d 833, 835 (9th Cir. 1976), cert. denied, 430 U.S. 966 (1977); see also, United States v. Licciardi, No. 92-10046, slip op. at 216-17 (9th Cir. Jan. 11, 1994) (indictment is duplicitous where conspiracy to defraud and conspiracy to commit mail fraud are charged in one count).[4] In United State v. UCO

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[4]Appellant suggests United States v. Molinaro, No. 90-50131 (9th Cir. Nov. 17, 1993), supports its argument that Count 2 is duplicitous. However, in Molinaro, the Ninth Circuit reaffirmed its holding in United States v. Poliak, 823 F.2d 371 (9th Cir. 1987), that "the unit of offense created by [18 USC] § 1344 is not each act in furtherance of a scheme to defraud but each execution or attempted execution of the scheme to defraud." Id., slip op. at 12988 (emphasis added). The court concluded that the indictment was multiplicious because it contained 30 counts alleging violations of § 1344 and each count identified one of the documents prepared in connection with executing the scheme to defraud. Molinaro is not dispositive because instead of charging the scheme to defraud in one count, the government charged components of the one scheme in different counts-- resulting in a multiplicious indictment. Id., slip op. at 12983-90; see also, UCO, 546 F.2d at 835 (multiplicity is charging a single offense in several counts.

Oil Co., the Ninth Circuit held that 18 U.S.C. § 1001 defines a single offense, but enumerates various means of committing that offense. Id. at 838. although dicta in United State v. Mayberry, 913 F. 2d 719 (9th Cir. 1990), might be construed to support the proposition that Section 1001 created two separate offenses, see id. at 722 n.7 UCO explicitly held that Section 1001 defines only one offense.

Because Section 1001 defines only one offense, it is proper for the government "to charge the different means, denounced disjunctively in the statute, conjunctively in each count of the indictment." UCO, 546 F.2d at 838. In the instant case the government merely listed the possible means, "by trick, scheme, and device," in the indictment, and then listed the overt acts supporting its theory that defendant engaged in a scheme to conceal material facts from the government.

Furthermore, it is not a valid objection that the jury, in arriving at a

unanimous verdict, amy not agree on the particular means by which the offense was committed. See Schad v. Arizona, 111 S. Ct. 2491,2496 (1991) (plurality opinion) ("Our cases reflect a long-established rule of the criminal law that an indictment need not specify which overt act, among several named, was the means by which a crime was committed."). The district court did not err by denying defendant's motion to dismiss the indictment as duplicitous.

II.

Jury Instruction Regarding Unanimity

Knapp did not object to the jury instructions at the time of trial, so we review for plain error. See United State v. Fagan, 996 F.2d 1009, 1016 (9th Cir. 1993). Plain error is highly prejudicial error affecting substantial rights. United States v. Payne, 944 F.2d 1458, 1463 (9th Cir. 1991), cert. denied, 112 S. Ct. 1598 (1992).

Knapp argues the district court should have instructed the jury that it had so

unanimously agree that defendant committed at least one specific overt act listed in Count 2. However, Schad v. Arizona, 111 S. Ct. 2491 (1991) (plurality opinion), indicates that there need not be unanimous agreement on one particular act supporting the jury's verdict. In that case, the Supreme Court stated: "We never suggested that in returning general verdicts in such cases the jurors should be required to agree upon a single means of commission, any more than the indictments were required to specify one alone." Id. at 2497. "[I]t has long been the general rule that when a single crime can be committed in various ways, jurors need not agree upon the mode of commission." Id. at 2506 (Scalia, J., concurring in part); see also Jeffries v. Blodgett, 5F.3d 1180, 1195 (9th Cir. 1993). For this reason, the district court did not commit plain error by failing to instruct the jury it had to unanimously agree that Knapp committed a particular overt act.

III

Submission of Redacted Indictment

Knapp argues the district court erred in submitting a redacted copy of the indictment to the jury, because the indictment alleged acts that defendant committed outside the statute of limitations. "[T]he matter of sending [an] indictment . . . to the jury is a matter entirely in the discretion of the trial court." Shayne v. United States, 255 F.2d, 739, 743 (9th Cir.), cert. denied, 358 U.S. (1988).

It was permissible for the conspiracy count (count 1) to include Knapp's acts occurring outside the statute of limitations. See Toussie v. United States, 397 U.S. 112, 115 (1970) (statute of limitations begins to run when ongoing crime is complete). To prevent the jury from considering those acts with respect to Count 2, the district court instructed the jury on Count 2: "[I]n order for you to find Mr. Knapp guilty, you must find that he engaged in some act in violation of that

statute--of law that I've just given to you after October 29th of 1986." Each juror had a copy of these instructions during deliberations. Therefore, the district court did not abuse its discretion by submitting to the jurors a redacted copy of the indictment.

We AFFIRM.

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APR 11, 1994

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. PAUL BURDETT KNAPP, Defendant-Appellant.	No. 93-30016 D.C. No. CR-91-60176 ORDER

Before: POOLE and TROTT, Circuit Judges, and KING, * District Judge

Judges Poole, Trott and King have voted to deny the petition for rehearing. Judges Poole and Trott have voted to reject the suggestion for rehearing en banc, and Judge King so recommends.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35 (b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

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Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation